

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUL 31 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

GARY YODER,)	2 CA-CV 2012-0061
)	DEPARTMENT B
Plaintiff/Appellant,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
JAMES LACHEMANN,)	Appellate Procedure
)	
Defendant/Appellee.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CV200701119

Honorable Joseph R. Georgini, Judge

AFFIRMED

Gary Yoder

Buckeye
In Propria Persona

K E L L Y, Judge.

¶1 Appellant Gary Yoder appeals from the trial court's dismissal of his complaint and grant of summary judgment in favor of appellee James Lachemann. On appeal, Yoder raises numerous claims of error. For the following reasons, we affirm.

Background

¶2 We view the facts and all “reasonable inferences therefrom in the light most favorable to the party against whom [summary] judgment was entered.” *Bothell v. Two Point Acres, Inc.*, 192 Ariz. 313, ¶ 2, 965 P.2d 47, 49 (App. 1998). Yoder, a prison inmate, filed a civil lawsuit against Lachemann, his former criminal defense attorney, in which he alleged claims for fraud, negligence, ineffective assistance of counsel, breach of contract, and constitutional violations based on Lachemann’s representation of Yoder during post-conviction proceedings. Yoder moved for summary judgment, and Lachemann filed a response and a motion to dismiss. Following oral argument, the trial court granted Lachemann’s motion, which it treated as a motion for summary judgment, and dismissed the complaint. This appeal followed.

Discussion

¶3 Yoder asserts the trial court erred in granting summary judgment, claiming that he was entitled to a default judgment because Lachemann failed to file an answer to his complaint.¹ We review de novo the court’s grant of summary judgment. *Id.* ¶ 8. Yoder previously raised, and we addressed, this claim on appeal. *See Yoder v. Lachemann*, No. 2 CA-CV 2010-0077, ¶ 8 (memorandum decision filed Sept. 2, 2010). As we determined in our previous decision, Lachemann filed an answer to the complaint. *Id.* Noting that Lachemann had filed an answer, the court properly denied Yoder’s

¹Lachemann did not file an answering brief. To the extent Yoder asks us to treat this as a confession of error, we decline to do so. *See Nydam v. Crawford*, 181 Ariz. 101, 101, 887 P.2d 631, 631 (App. 1994) (confession of error doctrine discretionary).

motion for entry of default judgment. *Id.* Accordingly, Yoder’s argument is without merit.²

¶4 Yoder next contends “that this court must grant res judicata [and] grant all relief demanded in the complaint.” (Emphasis omitted.) Yoder appears to base this contention on the fact that we reversed and remanded this case to the trial court on unrelated issues in two previous appeals. *See Yoder v. Lachemann*, No. 2 CA-CV 2009-0049 (memorandum decision filed Nov. 20, 2009); *Yoder*, No. 2 CA-CV 2010-0077. He thus asks that we “decide this case on the merits of the past . . . cases.” Because Yoder has not explained how the doctrine of res judicata is applicable here, he has waived this argument. *See Ariz. R. Civ. App. P. 13(a)(6)* (“An argument . . . shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on.”); *Polanco v. Indus. Comm’n*, 214 Ariz. 489, n.2, 154 P.3d 391, 393-94 n.2 (App. 2007) (appellant’s failure to develop and support argument waives the issue on appeal). Even assuming the argument had not been waived, it lacks merit, and we therefore reject it. The doctrine of res judicata bars a second lawsuit between parties on same cause of action following final decision on the merits. *Vance v. Vance*, 124 Ariz. 1, 3, 601 P.2d 605, 606 (1979). Both of the prior appeals arose from this case, but neither of them resulted in a final decision on the merits.

²Yoder claims the trial court’s order granting summary judgment was not signed, and this, therefore, “renders the entire judicial process void ab initio by criminal fraud.” (Emphasis omitted.) But, whereas the copy of the order attached to Yoder’s opening brief has a name stamp instead of a signature, the order contained in the record is signed.

¶5 Yoder further argues he was entitled to summary judgment because Lachemann did not file an affidavit with his response to Yoder’s motion. Although Yoder is correct that Lachemann’s response was not supported by an affidavit, he is mistaken that this entitled him to summary judgment. *See Northern Contracting Co. v. Allis-Chalmers Corp.*, 117 Ariz. 374, 377, 573 P.2d 65, 68 (1977) (opposing party’s failure “to file controverting affidavits does not in and of itself make the granting of summary judgment ‘appropriate’”); *Rand v. Porsche Fin. Servs.*, 216 Ariz. 424, ¶ 20, 167 P.3d 111, 117 (App. 2007) (absent showing that moving party entitled to summary judgment, opposing party “need not even respond”). We therefore reject Yoder’s argument that the trial court erred by failing to grant him summary judgment on this ground.³

¶6 The remainder of Yoder’s brief consists of undeveloped and unsupported allegations. The arguments are therefore waived, and we do not consider them further. *See Ariz. R. Civ. App. P. 13(a)(6)* (“The brief of the appellant shall concisely and clearly set forth . . . [a]n argument which shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on.”); *Polanco*, 214 Ariz. 489, n.2, 154 P.3d at 393-94 n.2 (appellant’s failure to develop and support argument waives issue on appeal).

³Yoder also claims that because Lachemann’s motion did not contain an affidavit, Lachemann “is not entitled to [a]ny motion for Summary Judgment.” (Emphasis omitted.) But Lachemann filed a motion to dismiss, which the trial court treated as a motion for summary judgment. And, moreover, even if Lachemann had moved for summary judgment in his response, he was not required to provide a supporting affidavit. *See Ariz. R. Civ. P. 56(b)*.

Disposition

¶7 The trial court's order is affirmed.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge